UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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HERBERT FOSTER,

Plaintiff,

-against-

MEMORANDUM AND ORDER
05-CV-3963 (DGT)

RASKIN & KREMINS, LLP.
ATTORNEYS AT LAW,

Defendant.
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TRAGER, United States District Judge:

Plaintiff, files this action *pro se* alleging that his civil rights were violated. The Court grants plaintiff's request to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915, but dismisses the complaint for the following reasons.

BACKGROUND

Plaintiff states that:

> This civil rights suit is pointed directly towards the incumbent attitude that these attorneys displayed towards me during their inadequate procedures of representation and unethical behavior of maliscous [sic] conduct into the proper of the authenticity of this case.

Complaint at 1. Plaintiff further alleges that the defendant sent him to "doctors and chiropractors that hold [him] entirely responsible for monetary damages." Complaint at 3. Plaintiff requests $100,000 in damages.

DISCUSSION

In reviewing plaintiff's complaint, the Court is mindful that because plaintiff is proceeding *pro se*, his submissions should be held "to less stringent standards than formal pleadings drafted by lawyers." Hughes v. Rowe, 449 U.S. 5, 9 (1980); McEachin v. McGuinnis, 357 F.3d 197 (2d Cir. 2004). However, under 28 U.S.C. § 1915 (e)(2)(B), a district court shall dismiss an *in forma pauperis* action where it is satisfied that the action is "(i) frivolous or malicious; (ii) fails to state a claim on

which relief can be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief."

"Because the United States Constitution regulates only the Government, not private parties, a litigant claiming that his constitutional rights [have been violated] must first establish that the challenged conduct constitutes 'state action.'" Ciambriello v. County of Nassau, 292 F.3d 307, 323 (2d Cir. 2002) (citations omitted). Moreover, it is well-settled, that private attorneys do not act under color of state law and are not state actors simply by virtue of their state-issued licenses to practice law. See, e.g., Rodriguez v. Weprin, 116 F.3d 62, 65-66 (2d Cir. 1997) (private attorney not a state actor law by virtue of his appointment by the court to represent a defendant in a state criminal proceeding); Agron v. Douglas W. Dunham, Esq. & Assocs., No. 02 Civ.10071, 2004 WL 691682, at *3 (S.D.N.Y. Mar. 31, 2004) ("It is well-established that as a matter of law a private attorney is not a state actor."). Plaintiff's claims against these defendants thus fails to state a claim upon which relief can be granted. This Court offers no opinion as to whether plaintiff may have a cognizable malpractice or negligence claim in state court.

CONCLUSION

Accordingly, as plaintiff seeks to bring a civil rights action against private parties, the action is dismissed for failure to state a claim upon which relief can be granted. 28 U.S.C. § 1915 (e)(2)(B). The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status is denied for purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

David G. Trager

DAVID G. TRAGER
United States District Judge

Dated: Brooklyn, New York
August 24, 2005